

Application No.: 10/084,446
Art Unit: 2124

Attorney Docket No. 0630-1430P
Amendment due March 17, 2005
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REMARKS

Applicants appreciate the Examiner's thorough consideration provided the present application. Claims 1-3, 5-11, 13-21 and 28-39 are now present in the application. Claims 32-39 have been added. Claims 4, 12 and 22-27 have been cancelled. Claims 1, 11, 28 and 30 are independent. Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. §119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. §119, and receipt of the certified priority document.

Information Disclosure Citation

Applicants thank the Examiner for considering the references supplied with the Information Disclosure Statement filed on January 10, 2003, and for providing Applicants with an initialed copy of the PTO-1449 form filed therewith.

Drawings

Applicants thank the Examiner for accepting Applicants' drawings.

Claim Rejections Under 35 U.S.C. §112

Claims 9, 28 and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed.

In view of the foregoing amendments, in which the Examiner's helpful suggestions have been followed, it is respectfully submitted that this rejection has been addressed. Accordingly, all pending claims are now definite and clear. Reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, are therefore respectfully requested.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-3, 5, 6, 8, 9, 11, 13-20, 22, 24-26, 30 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Metz et al., U.S. Patent No. 5,666,293 (referred to hereinafter as Metz). Claims 4, 7, 10, 12, 21, 23 and 27-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Metz in view of Shimomura et al., U.S. Patent No. 6,473,858 (referred to hereinafter as Shimomura). These rejections insofar as they pertain to the present claims, are respectfully traversed.

Complete discussions of the Examiner's rejections are set forth in the Office Action, and are not being repeated here.

In light of the foregoing amendments to the claims, Applicants respectfully submit that these rejections have been obviated and/or rendered moot. Without conceding to the propriety of the Examiner's rejections, but merely to timely advance the prosecution of the application, as the Examiner will note, independent claims 1, 11, 28 and 30 have been amended to address the Examiner's rejections.

Independent claim 1 recites a combination of elements including "a version comparing unit for comparing a version of a software code included in an advertisement broadcasting signal and a version of a previously installed software code".

Independent claim 11 recites a combination of steps including "receiving an advertisement broadcasting signal in which a user data containing a software code is inserted".

Independent claim 28 recites a combination of elements including "a code detecting unit for receiving a digital advertisement broadcasting signal and detecting whether the software code is inserted in the digital advertisement broadcasting signal".

Independent claim 30 recites a combination of steps including "checking whether a software code inserted in an advertisement broadcasting signal corresponds to a model of the receiving apparatus".

Applicants respectfully submit that the combinations of elements set forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and 30 are not disclosed or suggested by the references relied on by the Examiner.

Metz discloses a downloading operating system software through a broadcast channel by selecting a designated network logical channel 0 and receiving a broadcasting signal from the designated network logical channel 0. (see FIG. 9; col. 35, lines 30-53). As the Examiner correctly indicated on page 10 of the instant Office Action, Metz fails to teach that the software code is included in an advertisement broadcasting signal as recited in claims 1, 11, 28 and 30.

The Examiner turned to rely on Shimomura's teaching of a broadcast signal including an advertisement signal to assert that it would have been obvious for one skilled in the art at the time of invention to modify Metz in view of Shimomura to distribute advertisement signal in digital broadcasts.

However, Metz actually teaches away from modifying Metz in view of Shimomura as suggested by the Examiner, because Metz requires the use of a designated channel for the software upgrade. In particular, Metz teaches that the channel 0 carries the operating system upgrade files, but it does not carry any advertisement broadcasting signal.

The present invention inserts the software code into the advertisement broadcasting signal so that the user can watch the advertisement and program without interruption (i.e., the user is not forced to switch to the channel 0)

during software upgrade. Therefore, the present invention provides the user a more user-friendly way to upgrade software. Unlike the present invention, Metz requires the user system to switch to a designated channel 0, which is for broadcasting operating system upgrade files, without advertisement broadcasting signal, in order to upgrade the software. Thus, there is no motivation to provide the software code in the advertisement broadcast signal in Metz.

Since one skilled in the art would not have any motivation to modify Metz in view of Shimomura, it is improper to use the combination of Metz and Shimomura to reject independent claims 1, 11, 28 and 30. Therefore, independent claims 1, 11, 28 and 39 define over the references relied on by the Examiner.

In addition, claims 2, 3, 5-10, 13-21, 29 and 31 depend, either directly or indirectly, from independent claims 1, 11, 28 and 30, and are therefore allowable based on their respective dependence from independent claims 1, 11, 28 and 30.

In view of the above remarks, claims 1-3, 5-11, 13-21 and 28-39 clearly define the present invention over the references relied on by the Examiner. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §§102 and 103 are respectfully requested.

Additional Claims

Claims 32-39 have been added for the Examiner's consideration. Claims 32-39 depend from independent claims 1, 11, 28 and 30, and are thus allowable due to their respective dependence on independent claims 1, 11, 28 and 30, and/or due to the additional recitations included in these claims. Favorable consideration and allowance of claims 32-39 are respectfully requested.

Additional Cited References

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but rather to merely show the state of the art, no further comments are necessary with respect thereto.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

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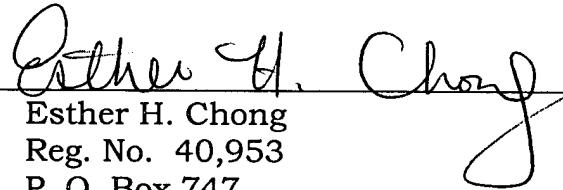
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In the event there are any matters remaining in this application, the Examiner is invited to contact the undersigned at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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